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T.R.A. DOCKET ROOM
August 16, 2005

VIA HAND DELIVERY

Hon. Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting from Changes of Law*
Docket No. 04-00381

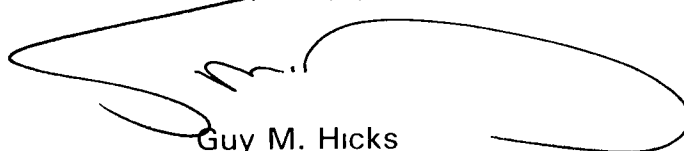
Dear Chairman Jones:

Enclosed are the original and four paper copies and a CD ROM of Rebuttal
Testimony on behalf of BellSouth by the following witnesses:

Kathy Blake
Eric Fogle
Pamela Tipton

Copies are being provided to counsel of record.

Very truly yours,



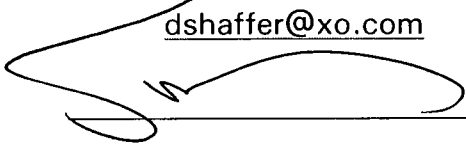
Guy M. Hicks

GMH:ch

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BELLSOUTH TELECOMMUNICATIONS, INC. 16 PM 2:00

REBUTTAL TESTIMONY OF KATHY K. BLAKE
T.R.A. DOCKET ROOM

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 04-00381

AUGUST 16, 2005

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR
BUSINESS ADDRESS

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy
Implementation for the nine-state BellSouth region My business address is
675 West Peachtree Street, Atlanta, Georgia 30375

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes I filed Direct Testimony on July 26, 2005

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A My rebuttal testimony responds to portions of the Direct Testimony filed on
July 26, 2005 by Joseph Gillan on behalf of the Competitive Carriers of the
South, Inc ("CompSouth").

1 Q. ON PAGE 4 OF HIS DIRECT TESTIMONY, MR. GILLAN SUGGESTS
2 THAT THIS PROCEEDING IS "ABOUT MAKING *DIFFERENT*
3 OFFERINGS AVAILABLE" IN PLACE OF THOSE ELEMENTS THAT
4 ARE NO LONGER REQUIRED TO BE OFFERED PURSUANT TO
5 SECTION 251(C)(3) OF THE TELECOMMUNICATIONS ACT OF 1996
6 (THE "ACT"). DOES THE TENNESSEE REGULATORY AUTHORITY
7 ("AUTHORITY") HAVE JURISDICTION OVER SECTION 271
8 OFFERINGS?

9
10 A Although I am not a lawyer, I understand the answer to that question to be
11 "No". What Mr. Gillan advocates is for this Authority to require that
12 BellSouth "offer through approved interconnection agreements each of the
13 network elements listed in the competitive checklist of § 271, albeit at a
14 (potentially) different price." As BellSouth described at length in its summary
15 judgment briefs, this Authority does not have jurisdiction over section 271
16 elements, nor are section 271 elements to be included in section 252
17 interconnection agreements. Thus, Mr. Gillan's entire premise that "this
18 proceeding is not simply about making less available to the CLECs, it is also
19 about making different offerings available in their place" is incorrect

20
21 Q. THAT BEING SAID, DOES BELL SOUTH CURRENTLY OFFER ANY
22 SERVICES THAT ARE "*DIFFERENT*" FROM, AND TAKE THE PLACE
23 OF, THOSE ELEMENTS THAT ARE NO LONGER REQUIRED TO BE
24 UNBUNDLED?

25

1 A. Yes. Almost a year and half ago, in response to the D.C Circuit Court of
2 Appeals' vacatur of the FCC's rules associated with mass-market switching,
3 BellSouth developed and began offering competitive local exchange carriers
4 ("CLECs") a commercial wholesale service which included stand-alone
5 switching and DS0 loop/switching combinations (including what was known
6 as UNE-P) at commercially reasonable and competitive rates. To date, over
7 150 CLECs have executed commercial agreements containing negotiated terms
8 and conditions relating to the provision of BellSouth's Wholesale DS0
9 Platform

10

11 With respect to high capacity loops and dedicated transport, BellSouth
12 currently offers, pursuant to its special access and private line tariffs, services
13 that are comparable to these loop and transport elements that are no longer
14 required to be unbundled pursuant to Section 251

15

16 Q ON PAGES 3-4, MR. GILLAN ADVOCATES THE INTERCONNECTION
17 AGREEMENT LANGUAGE HE BELIEVES IS "NEEDED TO
18 EFFECTUATE THE *TRRO*, AS WELL AS CERTAIN REMAINING
19 CHANGES FROM THE FCC'S EARLIER *TRIENNIAL REVIEW ORDER*
20 (*TRO*)" HAS BELL SOUTH BEEN ABLE TO NEGOTIATE
21 INTERCONNECTION AGREEMENTS WITH CLECS THAT DO IN FACT
22 EFFECTUATE THE *TRRO*?

23

24 A Yes As I stated in my direct testimony, 61 CLECs have executed *TRRO*
25 amendments, bringing their interconnection agreements into compliance with

1 current law. In addition to the 61 *TRRO* amendments, BellSouth has entered
2 into 37 new interconnection agreements with *TRRO*-compliant language for a
3 total of 98 *TRRO*-compliant agreements in the state of Tennessee. Thus, given
4 the number of CLECs that have been able to reach agreement with BellSouth
5 as to how to effectuate the *TRRO*, it is clear that Mr. Gillan's proposed
6 language is not in fact "needed" to effectuate the *TRRO*. What is required is
7 the parties' willingness to actually create an agreement that comports with
8 what the FCC has required. BellSouth's proposed language does that. As is
9 discussed in Ms. Tipton's testimony, Mr. Gillan's often does not.

10
11 **Issue 2 and Issue 9 – Definition of DS1 and DS3 Loops and Transport and UNE-P**
12 **Embedded Base during the Transition Period**

13
14 Q DO YOU AGREE WITH COMPSOUTH'S PROPOSED DEFINITION OF
15 "EMBEDDED BASE CUSTOMERS" USED IN EXHIBIT JPG-1?

16
17 A No. Throughout Exhibit JPG-1, Mr. Gillan defines the "embedded base" as a
18 CLEC's customers and the services subscribed to by such customers instead of
19 the actual UNE service arrangement that has been provisioned. His customer-
20 based definition, however, conflicts with the FCC's rules which use a service-
21 based definition. For example, for DS1 and DS3 loops and transport, the FCC
22 defines the embedded base by the actual loop or transport facility that is
23 provided to the CLEC and states that only those facilities that have been
24 provisioned as of the effective date of the *TRRO* should be included in the

1 embedded base. 47 C.F.R. § 51.319.¹ For local switching, the FCC's rules
2 state that "[r]equesting carriers may not obtain new local switching as an
3 unbundled network element." 47 C.F.R. § 51.319(d)(2)(iii).

4
5 BellSouth's proposed language in Attachment 2 follows the FCC's definition
6 more closely by defining the embedded base as the actual individual UNE
7 service arrangement, i.e., the actual loop, local switching element, or dedicated
8 transport element.

9
10 The difference between CompSouth's proposed definition and the FCC's rules
11 is that CompSouth is defining the embedded base to mean the CLEC's
12 customers versus the FCC's definition that is based on the actual UNE service
13 arrangement or a carrier requesting (or not requesting) service. This difference
14 is important because it impacts whether a CLEC can order new UNE service
15 arrangements for its existing customer (whether at the same or a new location)
16 during the transition period. It also raises issues relating to the actual
17 transition and any true-ups associated for such time period.

18
19 Q. IS A CLEC ALLOWED TO CONTINUE ORDERING UNE-P FOR ITS
20 EMBEDDED BASE DURING THE TRANSITION PERIOD?

21
22 A. No. CompSouth's position that CLECs can order new UNE-P service

¹ See 47 C.F.R. § 51.319(a)(4)(iii) for the definition of the embedded base for DS1 loops. See also 47 C.F.R. § 51.319(a)(5)(iii) for the definition of the embedded base for DS3 loops; 47 C.F.R. § 51.319(e)(2)(ii)(C) for the definition of the embedded base for DS1 dedicated transport, and 47 C.F.R. § 51.319(e)(2)(iii)(C) for the definition of the embedded base for DS3 dedicated transport.

1 arrangements for its embedded base during the transition period violates the
2 Authority's July 25, 2005 *Order Terminating Alternative Relief*, in which the
3 Authority concluded that "[e]ffective May 16, 2005, BellSouth is no longer
4 required to provide New Adds and may reject any and all new orders for the
5 de-listed UNEs, *including new orders to serve the CLEC's embedded base of*
6 *customers*"² The Authority's August 8, 2005 decision denying the motions
7 for clarification filed by Cinergy and Momentum confirms that the *TRRO*
8 precludes all new local switching, including a request from a CLEC to add a
9 new UNE-P arrangement for an existing customer.

10

11 **Issue 7 – Non-Impaired Wire Centers**

12

13 Q. DOES ANY CLEC WITNESS PROVIDE TESTIMONY WITH RESPECT
14 TO THIS ISSUE?

15

16 A. No; in fact, the CLECs have filed a modified issues list that deletes Issue 7 as
17 an open issue in this proceeding. However, in Exhibit JPG-1 under Issue 7
18 (page 20), CompSouth states that it accepts that "changed circumstances" will
19 not alter a wire center's designation as non-impaired pursuant to the *TRRO*
20 Alternatively, CompSouth does propose language to address situations in
21 which BellSouth mistakenly lists a wire center as non-impaired and a CLEC
22 relies upon such designation to its detriment

23

² *Order Terminating Alternative Relief Granted During April 11, 2005*
Deliberations, Docket No. 04-00381, issued July 25, 2005, p. 4 (emphasis added)

1 Q. DOES BELLSOUTH AGREE WITH COMPSOUTH'S PROPOSED
2 LANGUAGE?

3
4 A. Not in its entirety. BellSouth does agree with CompSouth that, if BellSouth
5 were to mistakenly list a wire center as non-impaired and a determination was
6 later made that the wire center should not have been on the non-impaired wire
7 center list, then BellSouth should refund any amounts due to a CLEC that,
8 under certain circumstances, had obtained tariffed high capacity loops and
9 dedicated transport in that wire center. BellSouth, however, does not agree to
10 the language in its entirety as proposed by CompSouth and has provided a
11 redline of such language attached to Ms. Tipton's rebuttal testimony as Exhibit
12 PAT-5. BellSouth's proposed contract language is more reasonable because it
13 makes clear precisely the circumstances in which a refund would be made and
14 delineates also the amount of any such refund. In contrast, CompSouth uses
15 language that is less precise. CompSouth also uses terms that are somewhat
16 inflammatory, such as "mistakenly" and "relies to its detriment". This type of
17 language reflects CLEC rhetoric and not commercially reasonable terms.

18

19 **Issue 13 – Removal of De-listed Elements from BellSouth's SQM/SEEM Plan**

20

21 Q. ON PAGES 53-54, MR. GILLAN ARGUES THAT ELEMENTS PROVIDED
22 UNDER SECTION 271 MUST BE INCLUDED IN STATE
23 PERFORMANCE PLANS. DO YOU AGREE?

24

25 A. No. The purpose of establishing the SQM/SEEM Plan was to ensure that

1 BellSouth met and continues to meet its parity obligations under Section 251
2 of the Act. This Authority recognized when it established the performance
3 measurements docket that “the adoption of an ongoing performance
4 measurement program with built-in enforcement mechanisms would provide
5 the Authority with a tool to assure that BellSouth was offering
6 nondiscriminatory access to its network in a competitively neutral manner.”³
7 The requirement to provide nondiscriminatory access to its network is a
8 Section 251(c)(3) obligation. The FCC, in granting BellSouth
9 authority to provide long distance services in Tennessee, stated “it is not a
10 requirement for section 271 authority that a BOC be subject to such
11 performance assurance mechanisms.”⁴ In fact, the FCC recognized that
12 Section 271(d)(6) provides the FCC with enforcement powers outside of any
13 performance penalty plan to act “quickly and decisively to ensure that the local
14 market remains open.”⁵
15
16 Indeed, the structure of the SQM/SEEM Plan demonstrates that it should not
17 include Section 271 elements. As this Authority is aware, the SQM/SEEM
18 Plan establishes a retail analogue or benchmark for each Section 251 element
19 BellSouth provides. This mechanism allows the Authority to compare
20 BellSouth’s performance for its retail customers to BellSouth’s performance

³ *Order Consolidating Docket Nos 99-00347 and 00-00392 into Docket No 01-00193 and Opening Docket No. 01-00362*, issued May 15, 2001, p. 6.

⁴ *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc for Provision of In-Region, InterLATA Services In Florida and Tennessee*, CC Docket No 02-307, Memorandum Opinion and Order, FCC 02-331, issued December 19, 2002, ¶ 167 (“Tennessee 271 Approval Order”).

⁵ *Tennessee 271 Approval Order*, ¶ 171

1 for CLECs and to determine if BellSouth is providing service at parity

2

3 There is no parity obligation for Section 271 elements. Consequently, it is
4 neither necessary nor appropriate to compare BellSouth's performance for such
5 elements provided to CLECs to BellSouth's retail performance, and it certainly
6 is not appropriate for BellSouth to be subject to any SQM/SEEM penalties for
7 Section 271 elements.

8

9 Importantly, and as I discussed in my direct testimony, the removal of de-listed
10 elements from the performance measurement plan does not mean that
11 BellSouth will no longer meet its provisioning commitments. Indeed, the fact
12 that the elements are no longer required under Section 251 means that there are
13 competitive alternatives available, and if BellSouth were to fail to meet its
14 commitments, CLECs have other options for serving their end user customers.
15 Many of BellSouth's tariffs contain provisioning commitments that, if missed,
16 carry substantial penalties payable to the customer, as well as out-of-service
17 refund commitments. Thus, the removal of de-listed elements from
18 BellSouth's performance plan does not mean that BellSouth will be able to
19 ignore its commitments. It simply means that there are market forces that
20 penalize BellSouth in the event that BellSouth fails to meet its commitments

21

22 Q IS THE SECTION ENTITLED "HOT CUT PERFORMANCE" IN
23 COMPSOUTH'S PROPOSED LANGUAGE UNDER ISSUE 10 (PAGE 25-
24 26 OF EXHIBIT JPG-1) NECESSARY?

25

1 A No. The language proposed by CompSouth with respect to hot cut
2 performance should not be included because hot cut performance
3 measurements are already included in the current SQM/SEEM Plan. The
4 Authority should not accept CompSouth's language, because any reference or
5 additional language in Attachment 2 would be duplicative and potentially
6 contradictory to the SQM/SEEM Plan already agreed to by CompSouth and
7 approved by this Authority.

8

9 **Issue 30 – Implementation of FCC “All-or-nothing” Order**

10

11 Q. DID ANY CLEC WITNESS ADDRESS THIS ISSUE?

12

13 A No.

14

15 Q DOES THE FACT THAT NO WITNESS ADDRESSED ISSUE 30 OR
16 PROVIDED EVIDENCE WITH RESPECT TO ISSUE 30 HAVE AN
17 IMPACT ON HOW THIS AUTHORITY SHOULD DETERMINE THIS
18 ISSUE?

19

20 A. Yes BellSouth provided direct testimony proposing language for this
21 Authority to adopt and also provided BellSouth's rationale for such language.
22 No witness has proposed alternative language for BellSouth to consider and
23 either support or rebut. The Authority should, therefore, approve BellSouth's
24 proposed language.

25

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2

3 A. Yes.

4

5

6

7

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9

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